App. F. IX-4

Previous References

192 J.30
(Law)

File No. 45-29

Serial Nos. 1-3

Later References
Law S2-30-N2.

Proceu
M/
17/11/43

General and Revenue Secretariat.

Serial Nos. Three

Part B for May 1930

SUBJECT

Notice of Amendment of Kandyan Law Declaration No. 1 of 1870 and Law Declaration and Amendment Ordinance No. 39 of 1938

notice dated 30.9.29 from sri G.K
Kenjar, Advocate, Shimoga, on behalf
Ramakka claiming title as owner of
1/4 of land in Kumbalur village of Ik
Talur which has been held by the the
authorities to belong to Sri Anjaneyaswa
Temple in the village —

Draft calling for a report &c.

MC
2.10.29

DP 3/10
MC

To the Hur Com^r in Mysore
P 2078(1) 16.10.29
Calling for a repo

Letter No: 612/29-30 dated 24.10.2
Hur Com^r forwarding copies of orde
by the Hur Com^r & Deputy Com^r in the
which state the facts of the
eat detail —

The Muzrai Branch maybe
to put up the vernacular records wh
received from the Hur Com^r (Vide A of

JDP
25/9/29

To the Muzrai Branch for
of Compliance

The main point in dispute, for which
is thereclaimed is about the title
contentions of land which the
Arunmuras have held to belong to
temple, but which the petitioner claim
his own. This is a matter for decision
Civil Court, and whose jurisdiction in
Questions is not in any way take
by the Reg VII of 1927. In this view
threatened suit may be have to be
since it is clearly held by the
that the Contentions of the petitioner
well founded.

1893

App. F. III—2]

General and Revenue Secretariat.

Kar File No. 49 of 1929.

Serial No.

may be sent to Mar Branch for perusal before filing the papers the linked file may perhaps be retained there

Mar Br 9.5.30

Mar Br

14/5

14/81 C/S

Retd Mar III 9.5.29

B

MM

G. Krishna Iyengar, B. A., LL. B.
ADVOCATE.
&
A. H. GURUSANTHAPPA, B.A., LL.B.,
Advocate.
-ooo-

Shimoga,
30-9-1929. 192...

To The Chief Secretary to Government of Mysore. Bangalore.
Law 49-29-1

SECRET
4 OCT. 1929

Sir,

We are instructed by our client, Venkata Rao, aged about 42 years, ~~Smarth~~ Somerayara Caste; Land-holder, Resident of Kumbalur, Honnali Taluk, Shimoga District, to issue this notice to you, as required to be served upon you under Section 80 of the Civil Procedure Code before taking the matter before a competent Civil Court; and we hereby do so and request you to kindly reconsider your legal position in regard to the matter in dispute, which we have set out in the annexed plaint. If, within two months from the date of delivery of this notice to you, the matter in question is not set right, we are instructed to file the plaint in a competent Civil Court to enforce the legal claims that our client has in regard to the matter in controversy. We have herein annexed the copy of the nature of the plaint we are going to file in Court. If the compound walls are pulled down, we claim damages to an extent of Rs.300/-; so we request you not to demolish the compound walls, pending disposal of this suit.

Yours faithfully
G. Krishna Iyengar

PLAINT.

IN THE COURT OF THE DISTRICT JUDGE, SHIMOGA.

O.S.No. of 1929-30.

Plaintiff:-

Plaintiff:- Venkatarao; aged about 42 years; Somerayara Caste; Land holder; Resident of Kumbalur, Honnali Taluk, Shimoga Dt.

V/s.

Defendants:-1.The Secretary to Government of Mysore, Muzarai - Department; Public Offices, Bangalore.

1(a) Muzarai Commissioner in Mysore, New Public - Offices, Bangalore.

1(b). Deputy Commissioner, Muzarai Department, Shimoga.

1(c). Tirthahalli Sub Division Officer, Shimoga.

and 1(d). Amildar, Honnali.

1 & 2. The Chief Secretary to Government of Mysore. Bangalore

Under Section 80, & 7 R.1 of the Civil Procedure Code, the above-named plaintiff begs to file this plaint for Judgment and decree:

1. That there is a plot of land described fully in the Schedule below, in the Kumbalur Village of Honnali Taluk, Basavapatna Magani, Shimoga District. The said plot of land belongs to the plaintiff. The plaintiff and his ancestors were in -- exclusive possession of the Schedule property for over 60 years in their own right as full owners thereof. In exercise of the right of their ownership over the Schedule land the plaintiff's ancestors had put up compound walls on all the sides of the -- Schedule property. The land in question does not belong to Sree Anjaneya Temple of the Kumbalur Village as alleged by the defendants; nor does it belong to Government.

Such

Such being the case, on or about the year 1923, at the instance of the plaintiff's enemies, records were made by the Revenue Authorities to the effect that the plot of land in - question belonged to the Anjaneya Temple. The Tirthahalli Sub Division Officer ordered that the compound walls on the suit land should be demolished and possession of the said land to be taken for and on behalf of the Sree Anjaneya Temple. The plaintiff went in appeal against this order to the Deputy Commissioner who confirmed the order of the Tirthahalli Sub -- Division Officer. This order was takin in revision to the Muzarai Commissioner who declined to interfere with Deputy - Commissioner's order.

The present position is therefore, that by the order of the defendants, the plaintiff's suit land is about to be taken out of his lawful possession and the compound walls standing on the plot of land are about to be depolished causing loss to the plaintiff to an extent of Rs.300/-.

Since tha land in question never belonged to the Sree Anjaneya Swami Temple, since the plaintiff is the exclusive lawful owner thereof, the defendants have no right in law to dispossess the plaintiff of the suit land and to demolish the compound walls thereon. The plaintiff claims the land in question as his own.

Cause of action for this suit arose finally on and after 2-9-1929 in Kumbalur within the jurisdiction of this Hon'ble Court

RELIEFS:-

That since the plaintiff is the owner of the suit schedule land, the defendants be permanently restrained from interfering with the peaceful, exclusive possession of and enjoyment by the plaintiff of the suit land as lawful owner thereof.

(2)If, by the time the suit is filed, the plaintiff is dispossed of the suit land, possession of the same may be ordered to be given back to the plaintiff together with an order ~~perpetual~~ perpectually restraining the defendants from interfering with plaintiff's peaceful possession and enjoyment of the suit land.

If the compound walls are pulled down by the date of filing this suit, the defendants may be ordered to pay to the plaintiffs damages to an extent of Rupees 300/- together with costs of the suit, subsequent interest.

SCHEDULE.

The plot of ground measuring 56½ ft by 22 ft with houses bearing Nos. 166, 167 and Khanesmari numbers 166 & 167 houses, in Kumbalur village of Hosnali Taluk, Basavapatna Magani of Shimoga District- bounded on the East by Government land; on the West by Government Road; on the North by Government Road; on the South by

A.V. Gurusamiappa & G. Krishna Iyengar
Advocates for the Claimant

SUBJECT.....

.....

.....

Section Law

File No. 49 – 2

Serial No. 2

No. P 2078 (1)

Diary No. of letter replied to.....1748.....

General and Revenue Secretariat

( )

the *192*

To

The Muzarai Comr in

Bangal

Date of issue.....16.10.29.....

Sir

Signed by.....

I am directed to forward herewith copy of the notice dated 30 [illegible] issued under section [illegible] by Mr G. Krishna Iyengar Advocate Shimoga on behalf of Venkatarao in the matter of a certain plot of land [illegible] Honnali village belonging to Sri Neyavara Swami temple [illegible]

.....ures.....

Copied by.....

Examined by.....

to request you to forward within fifteen days a detailed report about the claim with the Commissioner's records & accounts.

Maverick

Musrai

THE REVENUE COMMISSIONER
IN MYSORE,

Camp Mysore,
Dated, ...16th..October.192

FROM RAJAKARYA PRAVINA
P. G. D'SOUZA, ESQ., B.A., B.L.,
Revenue Commissioner in Mysore.

Law 49-29-2

To Financial
The Secretary to the Government
of His Highness the Maharaja of Mysore,
Camp Mysore.

SIR,

With reference to your letter No.31 dated th instant forwarding for report the notice sent by Mr. G. Krishnaiengar. Advocate, Shimoga on behalf of his client Sgneraya Venkat Rao of Kumbalur, in re his eviction from a plot of land belonging to Sri Anjaneyaswami Temple of the place and in the possession of the said Venkat Rao, I have the honour to submit herewith a copy of this office order confirming the Shimoga Deputy Commissioner's order disallowing the petitioner's claim to the land. The facts of the case are contained in great detail in the Deputy Commissioner's order, copy of which also is herein enclosed. The vernacular records pertaining to the case have been called for from the Deputy Commissioner and will be forwarded immediately on receipt.

I have the honour to be

Sir,

Your most obedient servant,

(Sd). P.G. D'SOUZA.

Musrai Commissioner.

612 Rev-2
29.30

Memo.

Copy of the above is forwarded, with compliments, to the Secretary to the Government of His Highness the Maharaja of Mysore Law Department, with reference to his No.P.2078/Law. 49-29 dated the 16th October 1929.

the Court of the Muzrai Commissioner in Mysore,

Dated Bangalore, 2nd September 1929.

Appeal No.58 of 1928-29.

Appellant:-- Samerayara Venkat Rao of Kumbalur village, Honnali Taluk, Shimoga District.

Respondent.-- Nadig Giriappa, Dharmadarsi of the temple of Sri Hamumanthadevaru temple in the village.

Subject.

Appeal against the order of the Deputy Commissioner, Shimoga District, rejecting the claim of the appellant to Khana land No.1 in the village and directing his eviction from the land which he had encroached upon by enclosing it by a compound wall and the reservation of the same for the use of the temple on festive occasions.

Facts of the case.

The encroachment of Government land Khana No.1 in the Khaneshmari Accounts of 1895-96, by the marginally noted three persons was brought to notice on a Takarar takhta in 1923-24.

1. Kammara Kalappa.
2. Samerayara Thimmappa (Paternal uncle of No.3).
3. Samerayara Seenappa.

The first individual removed the wall as per orders while the others persisted in their contention that the portion encroached upon belonged to them having been acquired by purchase long back. In the Mahazar of the villagers on 14th December 1924, they stated that a portion of temple land had been encroached upon by the appellant and a compound wall put up some 4 years back, and that its reservation was necessary as this piece of land was required for public use during Rathotsava. The appellant and his undivided brother Seenappa could not produce any documentary evidence in support of their claim to the land which he says was enclosed by a compound wall some 40 years back. The Amildar Mr. E. Rama Rao, after examining the Khaneshmari accounts reported that the contention of the appellant was untenable and that there was no doubt

that the land in dispute belonged to the temple. The Sub Division Officer agreeing with the Amildar directed the removal of the compound wall put up on the encroached Government site. The appellant appealed against this order to the Deputy Commissioner who after hearing him and examining the records rejected the appellant's claim. The present appeal is against this order. The appellant ~~was~~ with his Advocate and the reppondent on behalf of the temple were heard.

Order No.D(1).Dis.54/29-30. 12-9-1929

I cannot accept the contention of the appellant that the site belongs to him or that the wall is ancient.

The appeal is rejected.

(Sd). P.G. D'SOUZA.
Muzrai Commissioner.

" C o p y "

For Muzrai Commissioner.

In the Court of the Deputy Commissioner, Shimoga District.

Present:-- B.T. Kesaviengar, Esq., B.A., Deputy Commissioner, Shimoga District.

Muzrai Appeal No.P.C.794/26-27.

Appellant:-- Somerayara Venkata Rao of Kumbalur village, Honnali Taluk.
(Mr.T.G. Narayana Iyengar, Advocate).

Respondent:-- Government. (Nadiga Giriyappa Dharmadarsi of the Temple at Kumbalur).

This is an appeal against the order of the Sub Division Officer, Thirthahalli, directing the demolition of the compound wall put up by the appellant on the Government land intended for Rathotsava and other purposes connected with the Sree Hanumantha Devaru Temple at Kumbalur village in the Honnali Taluk.

Facts of the case.

A takarar list was put up in the year 1923-24 to the effect that (1) Kammar Kalappa (2) Somerayara Thimmappa (3) and Somerayara Seenappa had encroached upon Government land (ಸರಕಾರಿ ಪಟ್ಟಾ ಜಮೀನಿನಲ್ಲಿ ಅತಿಕ್ರಮಣ ಪ್ರವೇಶ ಮಾಡಿ ಕಾಂಪೌಂಡ್ ಗೋಡೆ ಕಟ್ಟಿರುತ್ತಾರೆ) and erected compound walls thereon, that as per orders Kalappa had removed the wall and the other two persons had not done so. The Amildar referred the matter to the Taluk Board as the village was comprised in the Village Panchayet for taking necessary steps, the Sanitary Inspector went to the spot and made enquiries in the village. He prepared a sketch of the encroached portion and the surrounding ~~portion and the surrounding plans~~ places and drew up a Mahazar. The villagers stated in the Mahazar dated 14th December 1924, that the piece of land measuring 33 yards x 10 yards to the north of Khaneshmari Nos.167, 166 and 165 was numbered as khaneshmari number. No.1 belonging to Sree Hanumantha Devaru temple, that Seenappa and Venkata Rao (appellant) and Thimmappa had encroached upon a portion of the land viz., 56½ feet x 22 feet and put up compound walls; that it was absolutely necessary to have the walls removed from the encroached portion as the piece of land

Land was secured during the [illegible] that the wall was put up only about ten years ago and that the question of its removal was under correspondence, Since then. But Soberayara Thimappa stated that he had not encroached upon the Government land that the portion of land for which compound wall was put up was his own and it was not possible to remove the wall which was put up some 40 years ago. The Sanitary Inspector submitted his report stating that no action could be taken to launch Prosecution under the village sanitation Regulation as the wall was put up more than 3 months ago; and that it was necessary to have the wall removed from the encroached portion. Then the matter was taken up in the Revenue Department. The same Patel Hanumanthappa who first reported on 20-3-33 that Thana No.1 was [illegible] stated before the Shekhdar on 1-3-1935 that he did not know whether the disputed land belonged to Sree Hanumanthadevaru and that the wall in question was put up 30 years ago, Gowda Basappa also said the same thing. The Shekhdar inspected the land and found that the wall in question was in a line with the wall put up by Talavara -- which was to be removed as it stood on the temple land. He reported that with reference to what wall it might be said, that the wall in question must have been put up on the temple land. Pothak Venkatesa Rao, Pothakdar Pujari stated on 14-12-1924 that the land on which the compound wall was put belonged to him and did not belong to the temple; that he did not possess any documentary evidence therefor, but there was some record filed in the Taluk office which would go to show that the disputed land was his, that the wall was put up many years ago, such a record was not available in the Taluk Office. A notice was issued to him to produce a copy of such references if he had any, [illegible] was requested to take that notice and so it was served on his house on 22-3-1935. He has not produced any such [illegible] The Inamjar Lists of 1933-36 were looked into. It is clear therefrom that Thana Hanumanthari No.1 and 2 were Sarkar lands. A shara is made therein to the effect that [illegible] The Amildar (Mr. A. Narasimha Rao) has reported that there is no doubt -

that

(space marked A in the sketch) belonged to the Temple that the encroached portion (space marked B similarly situated was once declared as such an encroachment on the report of the Patel and when the removal of the wall round space A was in question the same Patel was not declared to support the case as he was a great friend of Venkata Row that as the wall abuts the thorn-trampling ground (ಮುಳ್ಳು ತುಳಿಯುವ ಜಾಗ) it must be ordered to be removed as it interfers with that annual function; that the wall round space A is an eyesore and its removal would have been easily accomplished if Venkata Row were not the offendor. The Sub Division Officer Thirthahalli Sub Division after going through the entire records, observed that it was clearly made out from the Khan shumari accounts of 1895 6 and 13-14 that Khaneshumari Nos. 1 and 2 were Government land; that the owners of Khaneshumari Nos.167,166 and 165 did encroach upon the above Government land, that the takararars had not produced any documentary evidence to show that the encroached portion belonged to them, that the wall put up on the encroached portion (marked B) was got removed as it was built on the Government land and that the existance of the wall put up by the appellant on the encroached portion caused much inconvenience especially during the Rathothsava when there would be large gathering. He accordingly passed orders on 15-8-1936 directing the removal of the wall put up on the encroached Government site. Mr. Narasimha Pennath Advocate for the appellant put in a petition to the Sub Division Officer on 13-11- 6 stating that a notice was served on him to the effect that the wall should be removed and praying that the Amildar might be directed to rescind back the notice served on him. The Sub Division Officer passed orders thereon on 1-12-36 that he could not interfere in the matter as that was an appeal against his own orders. Sujari Krishnappa put in a petition to the Deputy Commissioner on 22-2-37 praying that the wall in question might be caused to be removed early before the commencement of Jatra. This was forwarded to the Amildar for needful action. The Amildar reported that the Sheikdar did not carry out the orders inspite of several reminders. The

grounds of appeal are.

1) One Madiga Giriyappa of the place has been the cause of considerable trouble to the petitioner and the other -- members of his family as a result of a bitter grudge which he has entertained against the petitioner. When the Sheikdar came to pull down the wall, Giriyappa offered to the coolies tempting wages for the pulling down of the wall but yet they refused to take part in it saying that it was most unjust.

This Giriyappa who has been a Dharmadarsi of the Anjaneya swami temple for the last 8 or 10 years has been the -- cause of this complaint against the petitioner with --- reference to the wall in question. He has now taken to seeing that the petitioner's compound wall is pulled down and with this object in view created contentions with reference to the site ~~site~~ on which the wall is -- standing. This was a long standing one, and before making orders to forcibly remove that the wall, the Sub Division Officer ought to have notified the matter to the petitioner and called for his explanation if any and ascertained his case and held the enquiry, if any, in his presence, Without adopting any such course but on the mere complaint of Giriappa and his party that this compound wall inconvenienc the temple procession, the Assistant Commissioner passed the order in question which brough the Sheikdar on ~~xxx~~ -- Saturday 25-6-27.

3. The existence of the wall for such a length of time was proof enough to show that the inconvence now complained of was imaginery and not real. The petitioner and his father have endowed the temple with valuable properties and yet they seem to think that the petitioner has encroached upon a bit of the temple site which is far from ~~xxxxxxx~~ probability and truth.

4. The orders are clearly opposed to law and opposed to the facts. The execution of such an order create such irremarable ~~x~~ mischief, loss and hardship to this --

this petitioner and that too in a manner, unwarranted by law.

5. The petitioner prays that the Honourable Court may call for the records connected with this matter and set aside the order of the Sub Division Officer.

The petitioner further begs that pending disposal of the appeal the execution of the said order may be directed to be stayed under the circumstances, as the carrying out of it involves substantial loss to the petitioners which could never be adequately compensated afterwards, The appeal was admitted and orders issued to the effect that the demolition of the walls might be stayed pending orders on this petition.

It is seen from the mahazar of the villagers recorded on 5-6-1903 before the Amildar that the Khaneshumari Nos.166 and 167 formerly belonged to the Kurubar Yelur Annoppa and they were purchased by Thimmappa, grand father of the appellant and those sites bore No.182 in the year 1895-96. The original Banjar list for 1895-96 shows that the site in question contained two bits of land one in the name of Anoppa measuring 11 Y.X.11 and another Government land measuring 12 Y X 12 Y. The ----- Khaneshumari Nos.166 and 167 (now 174-175) measure 18½ X 21½

Order

I have perused the records in the case and heard the -- counsel for the appellant. Further information from the Amil has also been obtained. The records clearly go to show that the appellant has no documentary proof to establish his -- claim to the land now in dispute. One of the previous Amildar (Mr. E. Rama Row) and the then Sub Division Officer have both held that the land according to the village accounts must have belonged to the temple. From an examination of the sketch enclosed in the file it appears to me that the conclusions -- arrived at by these officers are well founded. The situation of the land in dispute is such that it could not have been made over for creating private rights therein. The statements made by the villagers in this connection is conflicting, are reports made by the Patel. The appellant states that he purchased the land in dispute from a private person and even -

even for this alleged purchase he has no documentary proof Nor has he produced any evidence of payment of taxes for this area. The alignment of houses in that area clearly shows that the land in dispute has been encroached upon. The present Adidar's suggestion that Yana. Nos.1 and 2 are to the North of the land in dispute cannot be accepted according to the old Khanashumari registers, it is seen th the dimensions given there do not tally. In his order da 26-8-28 the Sub Divison Officer has clearly explained wher exactly Yana: No.1 and 2 had been situated. It is a --- significant fact that the neighbourer of the appellant has surrendered the encroached portion without demur.

In the absence of proof to the contrary, I am satisfied that the land in dispute is Government land ar required badly for the use of the temple on festival occas The appellant should be evicted there from and the wall -- constructed by him demolished.

Appeal dismissed.

(Sd.) B.T. Kesaviengar,
Deputy Commissioner.

"C o p y"

For Puzrai Commissioner.